

AUG 24 1942

CHARLES ELMOORE COMPLEY  
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. 334

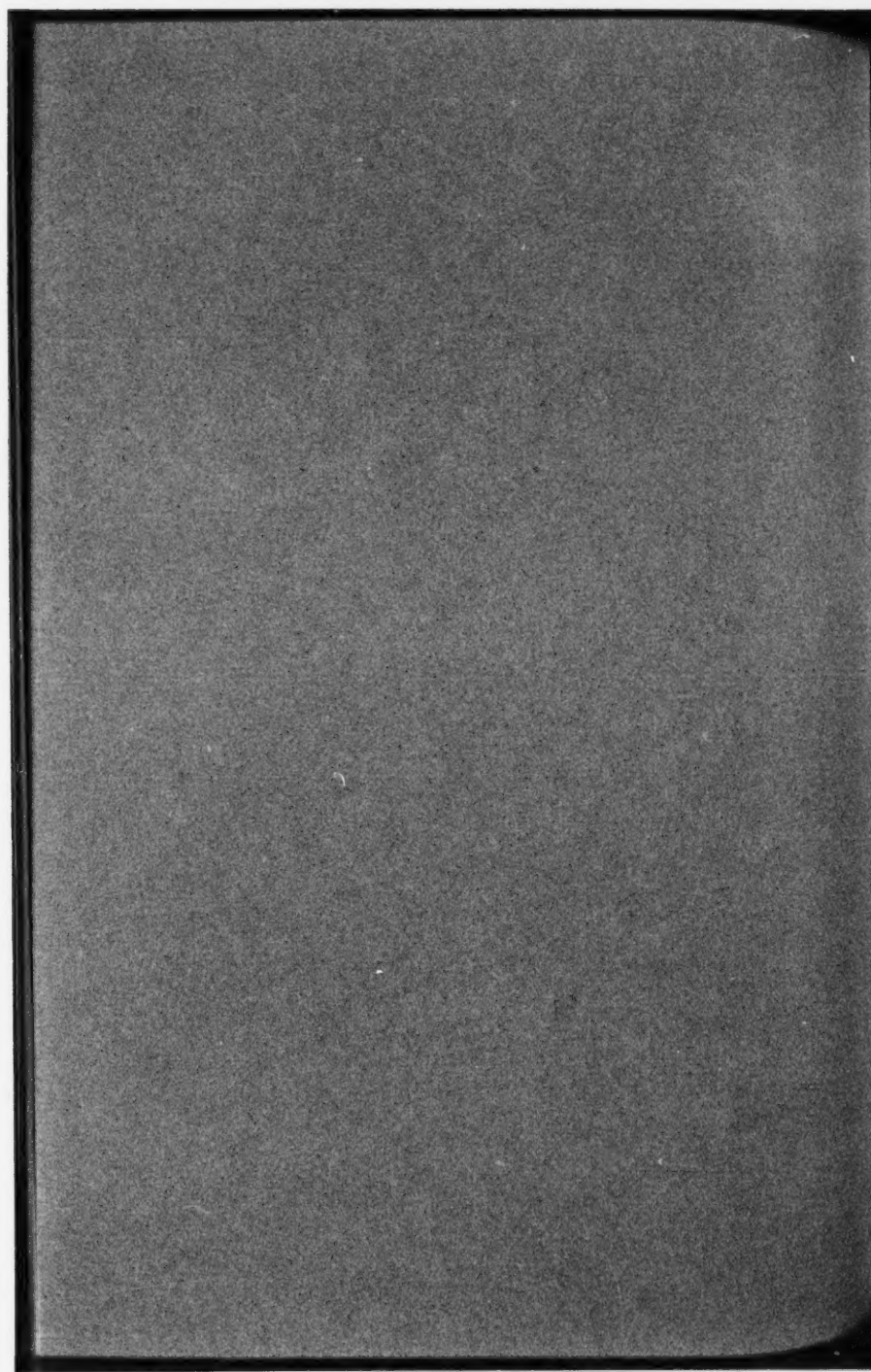
QUINCY and ILA MINGORI, Petitioners,

vs.

LYNN B. BRODERICK, Collector of Internal  
Revenue for the District of Kansas.

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE TENTH CIRCUIT.

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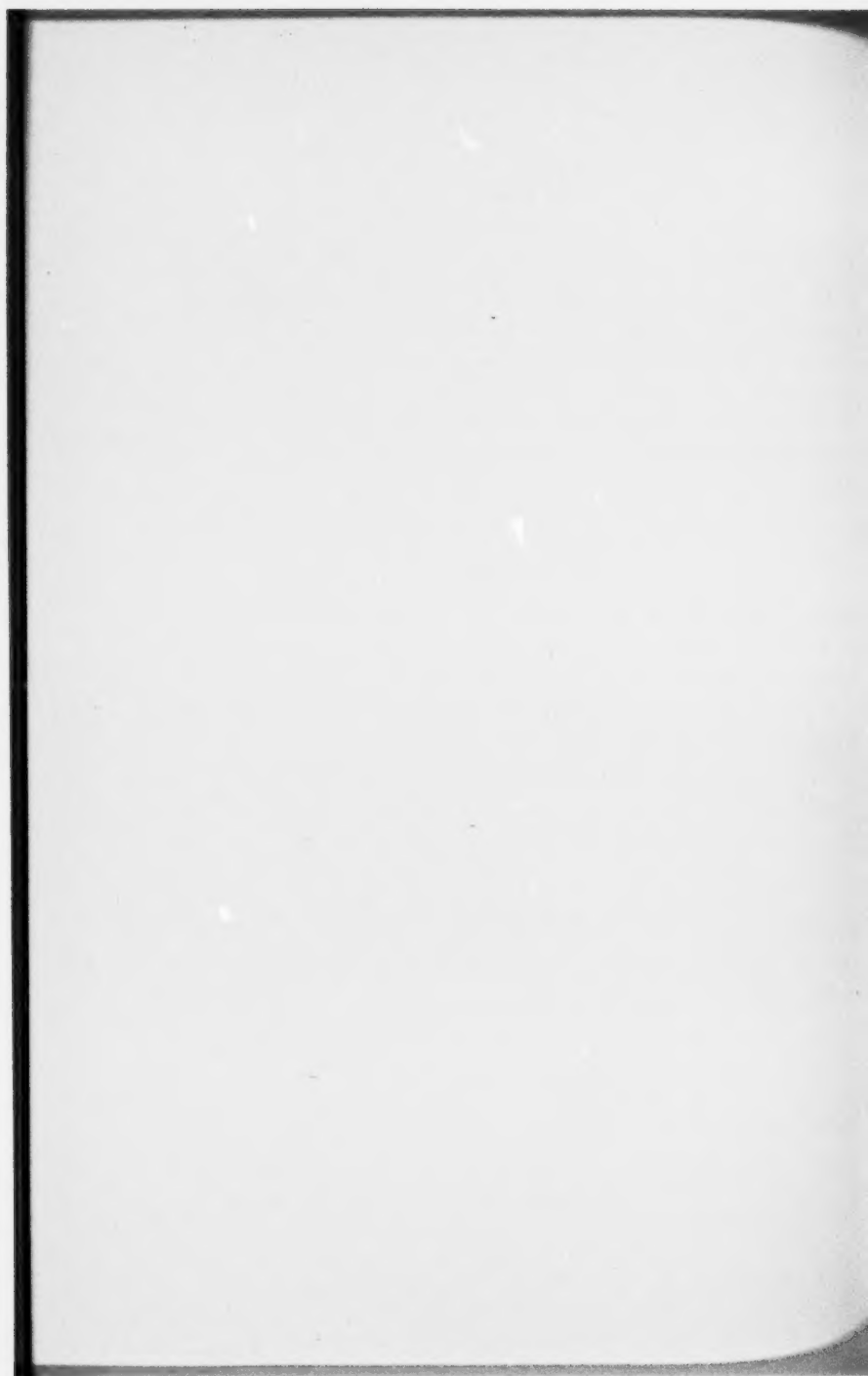
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**Revenue for the District of Kansas.**

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UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE TENTH CIRCUIT.**

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The petitioners pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Tenth Circuit entered in the above cause on June 22, 1942.

**Opinion Below.**

The opinion of the Circuit Court of Appeals is not yet reported.

### **Jurisdiction.**

The judgment of the Circuit Court of Appeals was entered June 22, 1942 (R. 117). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

### **Questions Presented.**

A revenue officer, without notice, has undertaken to assess so-called taxes and penalties and threatens to enforce payment by seizure and sale of property without opportunity for a hearing of any kind. May a citizen be thus deprived of his property under the Constitution of the United States, and particularly the Fifth Amendment thereto? Does the sweep of the statute, 53 Stat. 446, preclude and deny injunctive relief, except for which, relief may be obtainable under long recognized principles of equity jurisprudence? (I. R. C. Sec. 3653.)

May special findings of fact, of the Trial Court, not clearly erroneous, be set aside on appeal?

Federal Rules of Civil Procedure, Rule 52. (U. S. C., Title 28, foll. Sec. 723.)

### **Statute Involved.**

#### **I. R. C.**

Sec. 3653. . . . "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." . . .

### **Statement.**

Trial was had before the Court May 27, 1941 (R. 26).

The special findings of fact of the Trial Court (R. 23-24) may be summarized as follows:

The petitioners seek a permanent injunction enjoining the defendant as Collector of Internal Revenue from conducting any proceedings by distraint or otherwise to enforce collection of a so-called tax or assessment and penalties in the amount of \$18,834.21, with interest at the rate of 6 per cent per annum from January 8, 1940, or from selling, disposing of, or otherwise interfering with the free use and enjoyment of petitioner's property; that on January 29, 1940, the Collector caused to be filed a tax lien in the office of the Register of Deeds of the county; that petitioners have not been interested in any manner in any still, distillery or distilling apparatus, and were not engaged in the production of intoxicating liquors; that they have no property or funds with which to pay the so-called tax assessment and penalties; that the assessment was made without notice and based upon reports of subordinate officers in an extraneous matter, to which petitioners were not parties; that the Collector had no knowledge or information sufficient to form a belief petitioners were illicit still operators, subject to taxation as such.

The Court made findings of fact and conclusions of law, and on October 9, 1941, entered judgment permanently enjoining the Collector (R. 23-27).

On October 11, 1941, the Collector filed Notice of Appeal (R. 29-31).

On June 22, 1942, the Circuit Court of Appeals reversed and remanded the cause with directions to dismiss the action (R. 117-118).

### Specification of Error to Be Urged.

The Circuit Court of Appeals erred in holding 53 Stat. 446, I. R. C. 3653, forbids issuance of an injunction, under the facts of this case specially found by the Trial Court, and in reversing the judgment based on such findings when not clearly erroneous. Federal Rules of Civil Procedure, Rule 52. (U. S. C. Title 28, foll. Sec. 723.)

### Reasons for Granting the Writ.

The decision of the Court below deals with a question of great importance in federal tax litigation, and is in conflict with principles established by this Court.

. . . "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any Court." . . .

53 Stat. 446, I. R. C. Sec. 3653.

Petitioners recognize the importance of the section above quoted, and the principle underlying it. However, the giving of such magic to the word "tax" would be to break down constitutional barriers protecting citizens in their property, and result in gross and indisputable oppression without adequate remedy at law.

This Court has held the statute to be inoperative in each of the following instances: First, when the assessment is in the nature of a fine or penalty, as distinguished from a tax; *Lipke v. Lederer*, 259 U. S. 557; *Regal Drug Corporation v. Wardell*, 260 U. S. 386. Second, when there exists extraordinary and exceptional circumstances; *Miller v. Standard Nut Margarine Company*, 284 U. S. 498; *Allen v. Regents of the University System of Georgia*, 304 U. S. 439. Third, when the assessment is arbitrarily and capriciously made.



To permit the sale of petitioners' property for a tax they do not owe would be arbitrary and oppressive, and would destroy their business and inflict loss for which they have no adequate remedy at law.

In *Allen v. Regents of the University of Georgia*, 304 U. S. 439, 82 L. Ed. 1448, 58 S. Ct. 980, the petition, among other things, challenged the respondent's ability to maintain suit to enjoin the collection of the tax. The Court ruled as follows:

"The dispute as to the propriety of a suit in equity must be resolved in the light of the nature of the controversy. The respondent in good faith believes that an unconstitutional burden is laid directly upon its transactions in the sale of licenses to witness athletic exhibitions conducted under authority of the State and for an essential governmental purpose. The State is entitled to have a determination of the question whether such burden is imposed by the statute as construed and applied. It is not bound to subject its public officers and their subordinates to pains and penalties criminal and civil in order to have this question settled, if no part of the sum collected was a tax, and if the assessment was in truth the imposition of a penalty for failure to exact a tax on behalf of the United States. And if the respondent is right that the statute is invalid as applied to its exhibitions, it ought not to have to incur the expense and burden of collection, return, and prosecution of claim for refund of a tax upon others which the State may not lawfully be required to collect. These extraordinary circumstances we think justify resort to equity."

In the same case Mr. Justice Reed, concurring specially in the result, 304 U. S. l. c. 455, said:

"Section 3224 was enacted in 1867 and until recent years was followed by the courts without deviation. Exceptions were made to protect taxpayers against collection of penalties. In an exceptional case of 'special and extraordinary' circumstances, where a 'valid . . . tax could by no legal possibility have been assessed against respondent . . .' this Court per-

mitted an injunction. 'Special and extraordinary' circumstances have multiplied."

Moreover some of the lower federal courts have regarded the views expressed by the Circuit Court of Appeals as inconsistent with the decisions of this court or have otherwise sharply criticised the result.

The action of the Internal Revenue Department in making assessments of taxes for illegal manufacture of liquor, filing liens and issuing warrants of distraint against citizens who have no notice or knowledge of the proceedings and who have not in any manner been connected with or interested in the operation of any still, distillery or distilling apparatus based upon reports of investigators of the Alcohol Tax Unit is without authority in law.

It is evident that the imaginations of these agents have been allowed to take unrestrained flight and, further, their acts have in many instances been such as to transgress the sacred barriers provided by the Constitution for the protection of person and property in this country. See *Ledbetter v. Bailey*, 274 Fed. 375. See also *Driscoll v. Jones*, 19 F. Supp. 792.

### Conclusion.

It is, therefore, respectfully requested that this petition for a writ of certiorari be granted.

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